IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2076 OF 2007
IN
APPLICATION NO.ACCII/26/06

Shri Omprakash Raghuvirsaran Jain ...Petitioner

V/s.
Shri Sahu Sharad Kumar Jain & Ors. ...Respondents

Mr.G.S. Godbole with N.P. Bhavsar for Petitioner.
Mr.D.R. Talankar for Respondent No.2, 3 & 5.
Mr.G.M. Jain for Respondent No.4 & 6.

CORAM : V.M. KANADE, J.
DATED : 12th JULY, 2007.

P.C:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondent Nos. 2, 3 & 5 and learned counsel for Respondent Nos.4 & 6.

2 The Petitioner takes exception to the order passed by the Deputy Charity Commissioner on an application filed by him U/s.41-A of Bombay Public Trusts Act, 1950 whereby his application seeking certain reliefs, was rejected.

3. Briefs facts are that the Petitioner was elected as a Vice-President of Trust Shri Acharya Shantisagar Smarak Shri 1008, Adinath Bahubali, Digambar Jain Mandir Trust. Respondent No.1 is the President of the Trust. The Respondent No.2 is a Secretary and the Respondent No.3 is the Treasurer of the Trust. Other Respondents are trustees of the said Trust. There is dispute between the Petitioner herein and the Respondent No.2 and 3. It is the case of the Respondent No.2 and 3 that the Petitioner herein has been removed as a Vice-President from the said Trust after resolution to that effect was passed in a properly convened meeting and that an application has been made for effecting change and change report has been filed in the office of Charity Commissioner. The Petitioner herein, on the other hand, alleges that the Respondent No.2 and 3 have been removed as a Secretary and a Treasurer of the Trust after resolution was passed in another meeting and that he has also made an application by filing change report. It is an admitted position that both these applications are pending in the office of Charity Commissioner and there has been no final adjudication on these two applications. In the meantime, the Application had been filed U/s.41-E seeking certain directions for safe

custody of the donations which were made by the devotees and an interim order has been passed on the said application which is filed u/s.41-E and following order has been passed:-

> "So far the essential expenses such as, salary of staff, payment of taxes and cesses, payment of insurance premia, payment of electricity and telephone bills are concerned, the Bank account shall be operated in terms of resolution submitted by the trust to its banker immediately prior to 29.9.2006 and shall submit the statement of the expenses met out, out of withdrawal to this authority".

4. Thereafter another order has been passed on the said application on 19/04/2007 in order to ensure that offerings which are made by the devotees should be properly accounted for and kept in the Bank. Following order was passed:

> "In view of the above said order, it is now submitted that the temple does have a Golak/offeratory box, wherein the devotees offer/put the funds in the said box. The said box is required to be opened periodically because the offers can not be put in the box once it is filled. As this fact is indisputable, the opponents are allowed to open the offeratory box after it is filled completely. However, the opponents shall issue notices to all the trustees, members

of management committee and in the presence of Inspector from Public Trusts Registration Office, Greater Mumbai Region, Mumbai viz. Shri. R.R. Sawant. In presence of all the trustees present, the members of the Managing Committee present and the respectable members of Jain community present, Inspector Shri R.R. Sawant shall count the same and shall deposit the same in the bank account of the trust and submit his report accordingly to this authority."

5. Thereafter present Petitioner filed another application U/s.41-A of the said Act, seeking following reliefs.

"23. The Applicant is therefore approaching this Hon'ble Authority with a request to issue directions to the opponents No.2 and No.3 under section 41-A of the B.P.T. Act 1950 Viz:

(1) to open the offeratory boxes(Golak) periodically in the presence of the Panchas out of devotees of the trust and the trustees and also the Inspector of this office to be deputed by this Hon'ble Authority and to count the amount and deposit the same in the Bank account of the trust.

(2) To follow the provisions of the constitution in general and to allow the Vice-president to perform the duties and functions of the President in his absence as

per the provisions of the constitution.

(3) To convene the meetings of the Board of Trustees, (Karyakarini Samiti) so also the Annual General Meeting of the trust as per the provisions of the constitution.

(4) To give inspection of the accounts and other record of the trust to the office bearers and trustees of the trust on demand.

24. The Applicant therefore prays that

(a) Suitable directions as detailed in para 23(1),(2),(3) and (4) above be issued in the interest of proper administration of the trust.

(b) Such other orders as deemed fit in the interest of the trust be passed.

(c) Cost of this application be provided."

6. This application has been rejected by the Deputy Charity Commissioner on two grounds, firstly it is observed by him that the application U/s.41-E is still pending and is not finally decided and that certain interim orders have been passed in the said application and secondly, it has been observed that since two change reports are

pending and are not finally decided, it was not appropriate to decide the application at this stage. He has further expedited hearing of the change reports.

7. Learned counsel for the Petitioner invited my attention to the by-laws of the Trust wherein it has been held that in the absence of President, Vice President is entitled to work as President of Trust. He submits that it is an admitted position that the Respondent No.1 is unwell and is not in a position to attend the office of Charity Commissioner to look after the management of the Trust. He submits that the Deputy Charity Commissioner ought to have given direction permitting the Petitioner to function as the President of the Trust. He further submits that since the change reports are still pending, provisions of by-laws therefore, would have no effect and therefore, the Charity Commissioner has erred in not deciding the application U/s.41-A.

8. Learned counsels for the Respondents, on the other hand, submits that in view of pendency of change reports and pendency of the application U/s.41-E, it is not necessary to pass order on the application.

9. In my view, since interim orders have been passed on the application which is filed U/s.41-E and since directions have been given by the Charity Commissioner to ensure that the funds of the Trust are properly utilized and therefore, prayer clause 1 made by the Respondent in his application is adequately considered and is granted in the said application and it is not necessary to pass any further order with respect to said clause. So far as other prayers are concerned, in my view, since change reports are not yet decided, Deputy Commissioner was justified in not passing any order U/s.41-A during the pendency of the change reports.

10. Further, it will be necessary to impose certain conditions on the Trustees who are managing the Trust in order ensure that donations which are made by cheque are properly accounted for and that no major policy decisions are taken during the pendency of the change reports.

11. Therefore, order passed by the Charity Commissioner is modified. The Trustees shall deposit the donations which are received by cheque in the bank account. The drawer of such cheque shall apart

from mentioning the name of the Trust, shall also mention the Bank Account number of the Trust on the said cheque. Further, notice board will be put up on the premises of the Trust that donations which are made by the cheque should be in the name of the Trust and existing bank account should be mentioned on the said cheque. However, no new policy decisions should be taken by the existing Trustees. Charity Commissioner is directed to decide the change reports as expeditiously as possible. Parties shall co-operate with the Charity Commissioner for deciding said application. Charity Commissioner in any case, decide the applications within a period of three months from today.

. Writ Petition is disposed of accordingly.

V.M. KANADE, J.